

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DOCKET NO. 3:01-CR-31-14-FDW

UNITED STATES OF AMERICA

vs.

GARY HARRIS,

Defendant.

**MEMORANDUM
OF DECISION**

In this matter before the Court for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 706 of the U.S.S.G. (made retroactive by Amendment 713), the Court makes the following findings and conclusions:

1. Defendant is eligible for a sentence reduction to a period of confinement equal to 120 months (the mandatory minimum) for the reasons set forth in the Supplement to the Presentence Report.
2. In the case of a defendant who has been sentenced to a term of imprisonment “based on a sentencing range that has subsequently been lowered by the Sentencing Commission,” 18 U.S.C. § 3582(c)(2) provides that the Court *may* reduce the term of imprisonment “after considering the factors set forth in section 3553(a) to the extent they are applicable” and if such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission. In the Commentary to U.S.S.G. § 1B1.10, the Sentencing Commission emphasized that the decision to grant a sentence reduction authorized by retroactive amendments is discretionary and that retroactivity does not entitle a defendant to a reduced term of imprisonment as a matter of right.
3. The full record before the Court reflects a defendant who was had a lengthy involvement in a violent drug distribution conspiracy and who has already received an extraordinarily large

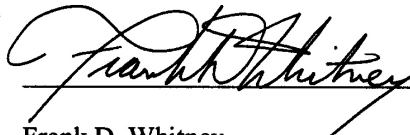
reduction in his sentence on account of his substantial assistance. In light of these facts, as well as a less than perfect disciplinary record while incarcerated, the Court will attempt to fashion a sentence that gives defendant some benefit of the amendment while promoting adequate respect for the law.

4. Upon consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a), the possible threat to public safety posed by the early release of a person with this defendant's criminal predispositions, and this defendant's post-sentencing conduct, the court finds:

- a. That the defendant should receive some benefit from the retroactive application of Amendment 706, but that a reduction to 120 months is inappropriate; and
- b. That a sentence of **124 months** is adequate, but no greater than necessary, to accomplish the objectives of 18 U.S.C. § 3553(a), while a further reduction would frustrate those objectives;¹ and
- c. That this sentence is below the amended guidelines range on account of the Defendant's prior substantial assistance to the government.

An appropriate Order shall issue separately.

Signed: September 5, 2008


Frank D. Whitney
United States District Judge



¹The Court notes that it is not required under Fourth Circuit case law to undertake an exhaustive analysis of all of the § 3553(a) factors in this Order. See United States v. Legree, 205 F.3d 724, 728-29 (4th Cir. 2000).